IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No. 12478 of 2009

Date of Decision: October 20, 2009

Sant Ram and another

…Petitioners

Versus

Union of India and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Saurav, Advocate,
for Mr. Surinder S. Kaliramna, Advocate,
for the petitioners.

Mr. Sunil Nehra, AAG, Haryana,
for respondent Nos. 2 to 4.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

M.M. KUMAR, J.

This petition filed under Article 226 of the Constitution prays for issuance of direction to the respondents to refund a sum of Rs. 2,19,779/-, which has been deducted by the Executive Engineer P.W.D. (Water Supply and Sanitation Division, Gurgaon-respondent No. 3 as tax at Source (TDS) while disbursing the payment of enhanced compensation against Award No. 3 of 28.2.1995. A further demand of Rs. 8,79,116/- has also been raised by respondent No. 3 vide letter dated 13.3.2008 (P-1), which according to the petitioners is illegal and arbitrary.

Brief facts of the case are that in the year 1994 the agricultural land of the petitioners was acquired by the State of Haryana for construction of Yamuna Canal at Village Dhanwapur, Tehsil and District Gurgaon. On

28.2.1995, Award No. 3 was passed granting compensation to the petitioners. They filed reference under Section 18 of the Land Acquisition Act, 1894., The Additional District Judge, Gurgaon, enhanced the compensation vide award dated 24.11.1998. Respondent No. 3 deposited the enhanced compensation in the Executing Court, Gurgaon, however, a sum of Rs. 2,19,779/- was deducted as tax at source (TDS). On 13.3.2008, petitioner No. 1 was asked to deposit another sum of Rs. 8,79,116/- as tax under the provisions of Section 194-A read with Section 194-LA of the Income-tax Act, 1961 (for brevity, 'the Act').

It appears to be well settled that under Section 194A of the Act, TDS could be deducted from the interest realised from enhanced compensation because it is regarded as revenue receipt. A similar petition came up for our consideration in the case of **Karnail Singh v. State of Haryana and others (CWP No. 21077 of 2008, decided on 13.8.2009)**. After discussing the relevant provision of Section 194LA of the Act and the expression of 'agricultural land' as defined in Section 2(14)(iii)(a) & (b) of the Act as also the notification No. 9447 (F.No. 164/3/87-IT(A-1) dated 6.1.1994, issued by the Central Government, the following question of law was framed in the said case:

> "Whether the interest accrued on the delayed payment of enhanced amount of compensation would partake the character of compensation taken from 'agricultural land' and, therefore, is assessable to deduction of TDS?"

We have answered the aforementioned question in the following terms:

> " The answer to the aforesaid question would depend upon as to whether interest is regarded as revenue receipt attracting the charging section of the Act or it could be described as

damages or compensation in lieu of the owners right to retain possession. The controversy had erupted before Hon'ble the Supreme Court in the case of **Dr. Sham Lal Narula v. CIT, AIR 1964 SC 1878**. The Supreme Court after considering the concept of interest laid down by the Privy Council and many other judgments has held as under:

> "In a case where title passes to the State, the statutory interest provided thereafter can only be regarded either as representing the profit which the owner of the land might have made if he had the use of the money or the loss he suffered because he had not that use. In no sense of the term can it be described as damages or compensation for the owner's right to retain possession, for he has no right to retain possession after possession was taken under Section 16 or Section 17 of the Act. We, therefore, hold that the statutory interest paid under Section 34 of the Act is interest paid for the delayed payment of the compensation amount and, therefore, is a revenue receipt liable to tax under the Income Tax Act."

The aforesaid proposition of law has been consistently reiterated by Hon'ble the Supreme Court in later judgments including the cases of **T.K.N. Govindaraja Chetty v. CIT, (1967) 66 ITR 465** and **K.S. Krishna Rao v. CIT, (1990) 181 ITR 408**. Accordingly it has been accepted to be settled law that interest received on delayed payment of compensation is revenue receipt exigable to income tax.

The issue came up before Hon'ble the Supreme Court in the case of **Bikram Singh v. Land Acquisition Collector, (1997) 10 SCC 243**. After referring to various judgments of Hon'ble the Supreme Court it was concluded that interest on delayed payment on the acquisition of immovable property would be revenue receipt and would thus be exigable to tax. The view of Hon'ble the Supreme Court is discernible from the perusal of para 10 of the judgment which reads thus:

> **"10.** But the question is whether the interest on delayed payment on the acquisition of the immovable property under the Acquisition Act would not be exigible to income tax? It is seen that this Court has consistently taken the view that it is a revenue receipt. The amended definition of "interest" was not intended to exclude the revenue receipt of interest on delayed payment of compensation from taxability. Once it is construed to be a revenue receipt, necessarily, unless there is an exemption under the appropriate provisions of the Act, the revenue receipt is exigible to tax. The amendment is only to bring within its tax net, income received from the transaction covered under the definition of interest. It would mean that the interest received as income on the delayed payment of the compensation determined under Section 28 or 31 of the Acquisition Act is a taxable event. Therefore, we hold that it is a revenue receipt exigible to tax under Section 4 of the Income Tax Act. Section 194-A of the Act has no application for the purpose of this case as it encompasses deduction of the income at the

source. However the appellants are entitled to spread over the income for the period for which payment came to be made so as to compute the income for assessing tax for the relevant accounting year."

Once interest is regarded as revenue receipt then it would fall within the mis-chief of Section 4 of the Act which is a charging section. Therefore, it follows that TDS under Section 194 A of the Act is to be paid by the petitioner in respect of the interest income on the delayed payment.

The argument of the counsel for the petitioner that interest income would partake the character of the enhanced amount of compensation which is agricultural income has to be answered in the negative and against the assessee.

As a sequel to the aforesaid discussion, the instant petition fails and the same is dismissed."

The same view has been followed by us in the case of **Bhula Ram and others v. Union of India and others (CWP No. 1493 of 2001, decided on 23.9.2009)**.

Having heard learned counsel for the parties and perusing the paper book, no doubt is left that the issues raised in the instant petition are squarely covered by our judgment rendered in the case of **Karnail Singh (supra)**. Accordingly, the instant petition fails and the same is dismissed in terms of our judgment rendered in the case of **Karnail Singh (supra)**.

(M.M. KUMAR)
JUDGE

(JASWANT SINGH)
JUDGE

October 20, 2009

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